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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

REUBEN G. LENSKE,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLANT'S OPENING BRIEF

from
ORDERS OF
THE UNITED STATES DISTRICT COURT
for the
DISTRICT OF OREGON

Reuben G. Lenske
Attorney pro se
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Portland, Oregon

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APPELLANT'S BRIEF

from

ORDER DENYING PREJUDICE

and from

ORDER DENYING MOTION FOR NEW TRIAL

STATEMENT OF THE CASE

My appeal from the original judgment and statement of jurisdiction will be found in file No. 19539.

Following are the taxes alleged owing (CR 1, 19539) and the corresponding findings (CR 1072, 19539) by the court:

Year	Count	Indictment (CR 1, 19539)	Finding (CR 1072, 19539)
1955	I	\$18,933.14 taxes	\$ 414.78
1957	II	14,479.38 "	1,006.18
1958	III	<u>7,736.18</u> "	<u>4,682.99</u>
Total		\$41,148.70	\$6,103.95
Estimated and withholding taxes paid F 4-K Ex 18, 19 & 20)			<u>2,466.30</u>

Balance owing on taxes found payable after crediting withholding and estimated taxes paid \$3,637.65

Count IV alleged the making of a false return. The indictment stated that I had income of \$564.41 for the year 1956 and the Court found that I lost \$9231.59 that year but held me guilty because that was \$708.58 less than the amount of loss I reported.

During these same four years showing underpayment of \$3637.65 of taxes, I gave \$3,619.13 (F 4K 243 and Cr 1107, 19539), almost the same as the unpaid taxes.

Also, during those same four years I directed that \$21,316.00 more be paid out of our law partnership income to my two junior but equal partners than to myself (F 4-0, 19539).

During those same four years numerous mortgages and contract receivables were substantially delinquent but I did not commence even one foreclosure. (See references in Appellate Brief *page 3, 19539)

My living expenses (CR 1107, 19539) were no more than those of an ordinary working family and I made no expenditure for luxuries such as new home, new automobile, new furnishing, jewelry, liquor, gambling, etc. (CR 1107, 19539).

There is not one stitch of evidence of motive, need or inclination to avoid paying \$3637.65 or any other sum in taxes during those four years. During the same period I paid out in the neighborhood of \$100,000 in real property taxes without having made even one protest or one appeal. See assessors' records, F 139-143, F 115-132, F 500, 506, F 538, F 557-8, E 100 F 4K. (If I aimed to avoid paying taxes it would show up in the \$100,000 area instead of or at least along with the \$3600 area.

My returns were prepared openly and honestly by competent and reliable persons. (CR 944, 19539 and 2/15/63, Vol. 1, pages 43, 44 and 94 to 104, 19539).

On February 15, 1965, I filed a motion for new trial consisting of 41 pages of affidavits and exhibits, CR 1 - 41, and on April 8, 1965, supplemental affidavits and exhibits, CR 58a to 58p, and on August 13, 1965, supplemental affidavits and exhibits, CR 83 to 87.

On August 4, 1965, the motion was set for hearing before the Honorable James M. Carter on August 13, 1965. On August 6, 1965, I filed a notice of intent to file an affidavit of prejudice.

against Judge Carter and on August 11, 1965, I filed such affidavit. On August 13, 1965, Judge Carter made an order denying prejudice. I filed a notice of appeal from the order but Judge Carter proceeded with the motion for a new trial the same day and denied it. From the order denying prejudice and the order denying the motion for a new trial appeals were duly taken.

Abbreviations

I shall refer to the transcript of proceedings that occurred on August 13, 1965, consisting of one volume of 139 pages as (Tr). I shall refer to exhibits as Ex and to folder numbers as F. Wherever I refer to a transcript of the original appeal file I shall give the volume number, date, page and this court's file number, 19539, this (Vol. 57, 4/21/64, 2669, 19539).

Bertrand Testimony

Because the record in 19539 is so prolix and because I consider the Bertrand specification (11, a., (1)), *page 43* so vital I am having three copies of all of her testimony *(and filed)* and the opposing testimony of Glenn Tellgren compiled in a separate volume as a separate transcript; *also pertinent exhibits & testimony*

Appendix

To the appendix I am affixing excerpts from the record showing that my returns were openly and honestly prepared.

Breakdown of Specification 11

11, a., (1)	Eleanor Bertrand \$3911.12 and \$2500 reductions of 1957 net worth, wiping out 1957 deficiency	Page 43
11, a., (2)	Doan \$28,500 from Lloyd Corporation resulting in reducing 1958 net worth by \$19,950 and a part of \$8,550, wiping out 1958 deficiency.	56
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11, a., (3 $\frac{1}{2}$)	Cimarron Insurance Co. check for \$2500 deposited June 24, 1958 and Florida check for \$5000 deposited May 1, 1958, reducing 1958 net worth by \$7500.	37, 38
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11, a., (10)	Court's newly expressed finding entitles me to additional \$1500 reduction in net worth.	72

Specification of Error 1

The court erred in denying my motion and affidavit of prejudice.

28 USCA 144

My affidavit of prejudice appears on pages 61 to 75 of the Clerk's Record. I ask the appellate court to read it. The prosecution has filed no counter affidavit and my affidavit must be taken as true. The only question for the appellate court to decide is whether under those uncontradicted facts I would obtain a fair and impartial hearing before Judge Carter on issues arising from my original motion, affidavits and exhibits on pages 1 to 41 of the Clerk's Record filed February 15, 1965, pages 58(a) to 58(p) filed April 8, 1965 and pages 85 to 87 filed August 13, 1965. I ask the court to read these 62 pages and then to read the summaries on pages 3, 4 and 5 of the Clerk's Record and then to review the Affidavit of Prejudice commencing on page 61.

The intemperate language by Judge Carter at the early part of the hearing (Tr 9, 11, 14) which included "...just pick up your papers and walk out" and the allotment of five minutes to cover four major items of my motion (Tr 138), the misconceptions of the fact in the record, as I shall show under specification 10 confirm the prejudice.

Court evidenced prejudice by silence

The court sits as a jury whenever it decides questions of fact. It sat silent when Mr. Alexander said (Tr 94) of me

"This is a con man we are dealing with."

(line 20) "We are dealing with a con man and nothing else."

What would a judge trying a criminal case before a jury do when a prosecutor made such statements before a jury? He would castigate the prosecutor and declare a mistrial. Only a prejudiced judge would sit mute - and inferentially accept the statement as evidence.

And when I said: (Tr 95)

MR. LENSKE: Again, Your Honor -- I'm the con man, but who is withholding evidence? They are withholding evidence; not me. (excuse the grammar) I'm trying to present all the evidence to the Court, and I'm the con man.

When I gave the court an extra opening to relieve me of the false and prejudicial charge of being a con man the court continued to show prejudice by its silence on that score

Court again shows prejudice in words

The Court's response was: (line 16 Tr 95)

THE COURT: You would like to retry this case, starting now, and take witnesses for two or three weeks.

The court's prejudicial attitude towards me is brought in focus when it is observed ^{an hour and} that/some minutes previously the following occurred: (Tr 73)

THE COURT: Do you propose to take all afternoon
on this matter?

MR. LENSKE: I think I would...

THE COURT: What do you propose, that we meet tonight
or tomorrow?

MR. LENSKE: I would agree to either one...I'd rather
we finished tomorrow morning instead of tonight.

However, the court's prejudice was evident throughout.

THE COURT: I don't know whether I'm going to let you
call witnesses or not. I don't propose to let this thing
go on forever.

To a judge who is impatient because of prejudice,
"forever is a day".

THE COURT: (Tr 88 line 21) You are referring to that statement about whether you cooperated or not?

MR. LENSKE: Yes.

THE COURT: They weren't able to pin you down to show what period you really were talking about.

Here again the court shows how its prejudice has blinded its conception of the facts. In my affidavit of August 12, 1965 (CR 85) appear the following contrasting quotes from George Nyman, one of the two agents whose testimony were the sine qua non of the indictment and the judgment against me.

George Nyman's testimony on March 23, 1963, Vol. 25, page 87 of transcript of Criminal Case:

"...so I had to take any information you were giving to try to compile your net worth, since you were not giving me any full cooperation."

George Nyman's testimony April 27, 1965 (Ex B)

"Q Well, was the situation different when you were under the Intelligence Division as to cooperation and your right to take documents for photostating?

A There was no difference in the situation. You were giving full cooperation."

The court's prejudice against me should be evident. I caught one of the two key Government witnesses in a wholly inconsistent statement on an important point relating to the agents' stealing of my documents. I was the questioner, not the witness, who was free to give whatever answer he chose; and yet the court puts the shoe on the wrong foot when it says the witness couldn't pin me down.

I make the following summary on this specification.

I notified the court immediately after I received notice of the setting of the motion before Judge Carter that I intended to file an affidavit of prejudice (CR 126).

Upon peremptory denial of my motion and the filing of my notice of appeal the court should have, in the exercise of due process, given me an opportunity to petition the Circuit Court of Appeals for a writ of mandamus.

After the appeal from the original judgment was perfected Judge Carter no longer had jurisdiction over the case and therefore his advocacy before the appellate court was not a judicial act but constituted a partisan act directly against the interest of appellant. See the exhibits on pages 76 to 80 of the Clerk's Record.

Many of the rulings of Judge Carter in the trial were not mere errors of law but constituted prejudicial acts.

A reading of my affidavit of prejudice plus the transcript of the hearing on my motion must lead to the conclusion that I could not and did not receive a fair and impartial hearing from Judge Carter on my motion for a new trial.

To deny the right to present witnesses and cross examine
witnesses present in the court/^{room}in the face of recent U. S. Supreme Court decisions guaranteeing confrontation under the Sixth Amendment must stem from prejudice.

Specification of Error 2

The court erred in proceeding to hear my motion for new trial after the notice of appeal was filed.

28 USCA 144

Amendment V U. S. Constitution
(Due Process)

The statute permits only one affidavit of prejudice in a case. Judge Carter knew promptly after he set my motion for new trial that I intended to file an affidavit of prejudice against him (CR 126). It was apparent that he knew he was going to deny my affidavit (TR 1, 6 and 7). The Circuit Court of Appeals does have jurisdiction once an appeal is taken. I should have been given, in the exercise of due process, time within which to obtain a writ of mandamus to obtain an immediate adjudication of the sufficiency of my affidavit of prejudice.

Since the Circuit Court of Appeals must have found that their face my affidavits and exhibits in support of my motion for new trial do show grounds for such motion when it remanded the issue to the District Court, I should be placed in the same position now as I would have been if the trial judge had followed due process, i.e., submit the issues on my motion for a new trial to a disinterested judge.

Specification of Error 3

The court erred in denying me the right to adduce live evidence in support of my motion for new trial.

Amendment V, U.S. Constitution
Amendment VI, U.S. Constitution
In re Oliver, 333 U.S. 257, 273

The statute makes no restriction on the type of evidence a defendant must present in support of a motion for new trial. Due process would therefore entitle a defendant to present evidence as it is commonly conceived in our courts of law. An ex parte affidavit is not the best method of presenting evidence but is intended to afford a practical means of getting facts before a court as an initial step to show both good faith and substance. But this is not the end. The opposition may file counter affidavits. Either side may then cross-examine the makers of the affidavits. To do otherwise would do violence to our whole system of open justice.

There is another reason for live testimony, not only from persons whose affidavits have been filed but from other witnesses. Not all persons are willing to sign affidavits. Some persons wish to give the impression of complete neutrality in any controversy. They are willing to give evidence but only in open court in the presence of both sides. Surely the pertinent testimony of such witnesses should not be eliminated in an issue that arises under 3 USCA 144.

Some people are afraid to give affidavits that could be construed to favor a litigant and disfavor the United States Government and especially the Internal Revenue Service or the FBI or

the Department of Justice. Such person's relevant testimony should not be excluded in any case, certainly not where a man's freedom is at stake.

Some witnesses are biased in favor of the Government and against a defendant. They will give affidavits to the Government and none to the defendant. A defendant should not be deprived of their testimony. Their testimony can be obtained by examining them in open court. To deprive a defendant of the right to examine witnesses in open court is to deprive him of life, liberty or property without due process.

The Supreme Court said in *In re Oliver* at page 273:

"A person's right to ... an opportunity to be heard in his defense - a right to his day in court - are basic in our system of jurisprudence; and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel."

The right to examine and cross examine witnesses is, therefore a fundamental and constitutional right and not a discretionary one for the court to decide. However, if it were discretionary the Court abused its discretion in view of the fact that Deschenes had been evasive not only in the depositions in the civil case but also in this case in chief. The same, of course, was true of Nyman and his inconsistent statements. Brady was insolent and insulting in his deposition in the civil case and simply refused to respond to the subpoena served on him for the hearing of August 13, 1965.

Deschenes' Evasiveness

Vol. 49(A), 7/17/63, 19539, page 1166

Mr. Burdell asked Mr. Deschene a direct question, whether (line 8) "in the course of preparation of Exhibit 820 as well as 820 first amended," Deschenes "used the duplicate deposit slips, including notations as to the source of the receipts."

At first Deschenes said he used them as a "reference source" (line 12).

Then he said he "used them as a guide" (line 14).

Finally Mr. Burdell succeeded in pinning him down:

Q (line 15) You based some of the figures on those deposit slips, did you not?

A That is correct.

I see no criticism of Deschenes basing some of the figures on the deposit slips but this bit of questioning should cast doubt on the honesty of the sine qua non of a case against me.

Deschenes' Evasiveness

page 1166 line 24

Q And in some cases it is correct, is it not, that in order to find an item you would commence with the notation or the entry on the December 31, 1958 net worth statement and then work backward from that entry; isn't that correct?

A Well, I don't know. Do you have any particular case of that?

Finally, when Mr. Burdell pinned him down to the(F 236) Meljie item Mr. Deschenes said, page 1168, line 6:

A Yes I did.

Mr. Burdell tested Deschenes on another item, V-1, Isabella L. Bruce and asked him (page 1168, line 25), "did you use the same procedure with respect to that account?"

A On that one, I had the known balance 12/31/52 (should be 58, see page 1171 line 7)...I worked it back on the deposits I found...and on the basis of that I arrived at the balance.

Q In the Exhibit V-1 there is a deposit slip, is there?

A Yes, there is.

Q And attached to it ...is a reference to payment by Isabella L. Bruce?

A Right.

Q Did you take into consideration that payment in arriving at your figure?

A No, I overlooked that one.

Q What was the effect of overlooking it on the net worth statement?

A I understated the liability by about \$100 (should be \$500).

Q And the effect on income?

A Well, it would overstate the income by \$500.

Q That is, it would overstate the income as shown on Government's Exhibit 820 or 820 first amended?

A Yes.

THE COURT: What was the amount of the deposit overlooked - \$500?

THE WITNESS: Five Hundred dollars.

Deschenes' Evasiveness

page 1171, line 11

Q Now, on a number of these items that are in the net worth statement you did follow the practice of commencing with the final net worth statement and working backwards, did you not?

A No, I used the documents wherever they were available.

Q But if you didn't find the document, in those cases you would use the 1958 net worth statement and work backwards from it, did you not?

A Do you have a specific instance? There are so many items in this net worth, I can't keep track.

Q I gave you two. I don't want to go over each one.

I want to ask you if in general you followed that practice in other instances.

Q (page 1172, line 4) I will limit the question this way; Did you follow that practice in other instances in addition to the two that I brought to your attention?

A I can't recall right now without some ----

Q You mean you don't know whether you did or not?

A I don't recall.

Deschenes' Evasiveness

Q (page 1172 line 10) You also had a net worth statement as of December 31, 1954, did you not?

A Yes, sir - if that is the one prepared by Mr. Cauthorn.

Q That is the one I have reference to. I think it is Exhibit 190. In some cases you used that net worth statement and worked forward, did you not?

A Do you have some references of that, too?
I can think of a couple.

Q I am trying to find out what your method was of preparing a net worth statement. I don't want to go into every example. I want to know if in general you used that method.

A I used those as anchor points. I didn't necessarily use them.

Q You didn't necessarily use them?

A No.

Q Did you at any time use them?

10
A I might have, if you can recall some example that I can refer to.

Q As of now you mean you don't know?

A Well, I just can't say. I mean, there have been so many items in this net worth and so many transactions by the defendant that it is kind of hard to really keep up with it.

Q But in the preparation of a net worth statement for purposes of a criminal tax trial, regardless of the number of items, you would have a method which you would follow, would you not?

A I used the documentation that was presented and the witnesses in this court.

Mr. Deschenes continued to evade (page 1174 and 1173) until he was asked by the

THE COURT: And that is the way the question now stands: Did you use it to check? Did you use it as a starting point?

THE WITNESS: I'm sure I used the document in this case that has been presented here.

Deschenes continued to parry (line 15 page 1174) and then: (page 1175)

Q But the peg that you would use for the beginning net worth figure as of December 31, 1954, would be the

Cauthorn net worth statment, which is Exhibit 190; is that not correct?

A I wish you would state that again, please.

Q Yes. The peg or the base or the evidence which you would use for establishment of the December 31, 1954 net worth, which we call the beginning net worth, in some cases was the Cauthorn net worth statement which is Exhibit 190; is that not correct?

A I could have. I can't say for sure. I could have.

Q Are you saying that as of now you don't know whether or not in some cases that was the only document that you had to use in order to establish the beginning net worth in this

A No, there has been the testimony of witnesses here, and there has been documentation put in by them, and I am sure that all of those were considered.

Q In establishing the beginning net worth?

A The beginning net worth.

Q Now, we are referring to the Cauthorn net worth statement, which is Exhibit 190 (handing document to the witness). There is a figure under the heading "Assets" and under the subheading "Partnership Interests" designated as "Lava Motel," in the amount of \$7,589. Did you use that figure

A I will have to look at the summary sheet. Have you got the folder number?

Q We will find it for you. Folder 141. Look at page 11 of Exhibit 820.

Q (page 1176 line 23) Did you use that figure?

A Yes, I did.

Q (page 1177) Do your notes show that you used anything except that figure for the beginning net worth?

A That is what I used -- Mr. Cauthorn's statement.

Q My question is, did you use that figure and only that figure?

A As of 12-31-54.

Q Right. And did you do anything to verify the accuracy of Mr. Cauthorn's figures or his figure with respect to that item?

A No, I didn't.

Deschenes parried and then again admitted (page 1177):

Q I had better repeat that question, I guess. Were there cases where you used only an anchor at one end, without using the anchor at the other end? And by the term "anchor" I am talking about the two net worth statements that we have been talking about.

A Well, in this case I just used Mr. Cauthorn's net worth as of 12-31-54.

Q At the beginning?

A Right.

Q (page 1178 line 10) In that case, (F 236 page 5, schedule C) you used the anchor, that is, what you would

call the anchor, of December 31, 1958, that is the net worth statement of December 31, 1958, did you not?

A Yes, I did.

Q What did you use, if anything, for a beginning net worth statement or for a beginning net worth anchor or base?

A In the case of Isabella Bruce I just computed it back on the known deposits.

Q So that (page 1179 line 6) in the case of Folder 236.. let's take as a hypothetical illustration, if in the year 195 you overlooked a deposit slip, then the ending figure for 195 would be inaccurate would it not, as it was in the Miljic case?

A If I overlooked a deposit in 1958 ----

Q Right.

A -- the ending balance would be understated.

Q Or, aside from overlooking deposit slips, if a deposit slip were lost or misplaced or anything of that sort and you didn't find it, that would result in the same inaccuracy, would it now?

A Based on your assumption, yes.

Deschenes and Nyman should have had
more accurate knowledge of my case

Q (page 1181 line 10) Now, you worked on this case about two and a half years, as I understand; is that right?

A Yes.

Q And during a substantial portion of the two and a half years you worked on it fulltime; is that right?

A Yes.

EFFECT OF FOREGOING TESTIMONY

OF

ALBERT DESCHENES

The net effect of the foregoing testimony of Albert Deschenes when considered in connection with the affidavits of Richard D. Bennett, Winnifred Jones and O. G. Larson (CR 19 to 24) and the \$2500 deposit of June 24, 19 in my account of the Cimarron Insurance check and the deposit of May 1, 1958 of \$5000 (Exhibit S-1) of the Florida bank check for the same beneficiary is as follows.

1. Deschenes was evasive in his testimony.
2. Either he failed in his duty to follow up the leads given him by me through the deposit slips on two major (Ex S-1) items totalling \$7500 in the year 1958 or
3. He deliberately overstated my net worth at the end of 1958 in the sum of \$7500 on account of those two items and
4. Because of:

a. incompetence or

b. evil motive or

c. zeal in accomplishing an end result regardless of means,

proved his utter lack of qualification for the preparation and introduction of a net worth statement (820 and 820 first amended) as a disinterested expert.

It is important to remember that court admitted the net worth statement on the basis of Deschenes' testimony and accepted whole the majority of the items on it without

question whenever the specific item was not disproved by me or my accountant. It must be remembered that this is the same mastermind who made up the Rebecca Tarlow statement (Ex W 2358, F 226) which was \$5000 wrong for one year due to one single omission and also wrong for each of the other years in issue. This is the same Albert Deschenes who had Mrs. Tarlow sign the statement which virtually became the evidence when she was a patient in a hospital. This is the same Albert Deschenes who masterminded the false affidavit of Eleanor Bertrand. This is the same Albert Deschenes who stole from my files numerous documents and made an affidavit that, after returning 193 of such stolen documents, he no longer had any of my documents; yet produced an original such stolen document at the last session in court. This is the same Albert Deschenes who also produced in my recent suit against him microfilm of documents that he knew were stolen from me (about 250 such documents) and that he retained secretly in his files when he made the affidavit that he had no documents belonging to me. This is the same Albert Deschenes who interviewed over 500 persons in his investigation, recommended my prosecution, and then pretended such disinterestedness and expertness that he was able to and did prepare the net worth statement from the evidence in the case. Were his mind and magnanimity so great that he could separate his guilt conclusion

long before prosecution and all the hearsay he gathered during investigation from the testimony at the trial?

Deschenes' use of Anchors

Deschenes' competence or at least the method he used in arriving at the net worth statement were so faulty in another respect that the Government net worth statements should be stricken. There are two reasons for this in addition to the ones previously given.

1. Deschenes used as one anchor for the beginning (Dec.31,1958) net worth the Cauthorn net worth statement (Ex 190). For the other end, (Dec. 31, 1958) he used Ex 2372. He did not tie them together, i.e., he did not trace each item on each statement forward or backward from one to the other. He admitted to two or three specific examples that he did not corroborate, such as Lava Motel, \$7,589 (Vol. 49 (A), 7/17/63, 19539, page 1177). This method was obviously faulty and insufficient to make a prima facie case.

2. My so-called net worth statement as of December 31, 1958 was not a net worth statement but a compilation of properties I owned or managed with approximations only for the sums, costs, etc. This is not a financial or net worth statement upon which a criminal conviction can properly be based and Mr. Deschenes admitted he used some of the items on it for that purpose without corroboration.

This is exhibit 2372, Folder 513. It was dated October 18, 1961 and reads in part as follows:

"I have intentionally compiled to the best of my ability all properties administered by me with my best estimated cost of those properties to either myself or the correct beneficiary. In some cases I have named a designated trust beneficiary, and in some I have not." It is not my intention to claim property as my own which I had at all times acknowledged to be that of others. However, my including comprehensively all properties being administered, I would like to avoid criticism for omissions."

Also the following is paragraph 6 of the instrument used by Mr. Deschenes and accepted by the court as an anchor point and as my own financial statement:

"Many of the obligations are trust obligations besides those specifically mentioned as such and many of the assets are designated as specific securities for designated liabilities or trusts."

Mr. Deschenes, the prosecution and the Court used this instrument as an admission against interest and in the nature of a confession. I have found and know of no authority that permits such a document to be used for such legal purpose.

27

Specification of Error 4

The court erred in admitting in evidence carte blanche depositions that were taken in a civil case.

Amendment V U.S. Constitution

I sued Government agents for possession of documents that they stole from me.* John Brady, Albert Deschenes and George Nyman are three of the defendants in that case. I took their depositions and discovered that John Brady had stolen from my office at least 50 documents which he turned over to Deschenes and Nyman. I took the depositions of John Brady and George Nyman and Mr. Alexander, the prosecutor, took the deposition of Albert Deschenes in that case. I believe that selective, pertinent, relevant statements under oath on prior occasions could be introduced as evidence for impeachment purposes, etc. but that such introduction should be confined to the relevant evidence and that to throw into the record complete depositions which may and in this instance does contain prejudicial and a maize of irrelevant matter is an abuse of discretion.

One of my contentions in my appeal in chief is that I was treated in a wholesale, carte blanche manner by the court and this is further evidence towards that end. The depositions are designated A, B, C, D and E.

Since the court is the trier of the facts in this proceeding and admitted the depositions carte blanche (without their even being shown to defendant for examination) it may be presumed that the court was influenced by the irrelevant and prejudicial matter in

* A, B, C, D and E

the depositions.

TR 81

THE COURT: Objection sustained. (to the taking of John Brady's testimony). The deposition will be made a part of the trial for the purpose of this motion for a new trial.

TR 89

MR. ALEXANDER ... I think we should have all the depositions attached to the proceedings...

THE COURT: We will attach the Nyman's deposition and file it as part of these proceedings. Was there a deposition taken from Mr. Deschenes also?

MR. ALEXANDER: Yes, Your Honor. I will be happy to have it attached also.

THE COURT: You may attach it also.

The court erred in requiring me to make an oral offer of proof relating to testimony I expected to elicit from adverse witnesses present in the courtroom.

Amendment V, U. S. Constitution

Tr 82

THE COURT: What do you want to prove by Mr. Nyman? Don't you have an affidavit with respect to Mr. Nyman?

MR. LENSKE: Yes, I have, Your Honor. I have made an affidavit with relation to Mr. Nyman and Mr. Deschenes. They are both here in the Courtroom. I would ask the Court not to require me to disclose my examination of them in advance, because I believe what information I should obtain from them will be more cogent if it is gotten fresh without giving them warning as to the way I intend to ask them.

THE COURT: Do you want to make a showing as to what you would elicit from them?

MR. LENSKE: If I do that, I will disclose to them the nature of my examination of them. It will lessen the effectiveness of the testimony that I hope to be able to elicit from them.

THE COURT: I am not going to take any testimony unless you make proof on the record.

MR. LENSKE: I want to object to that requirement; but I have no choice but to comply with it. I believe in proper discretion in the status of my case that the Court should properly let me proceed.

with my testimony in my own way, rather than restrict me in a place where I cannot examine them without disclosing to them what I want to examine them about.

THE COURT: What do you propose to do, make an offer of proof here or not?

MR. LENSKE: Well, since I evidently am required to do so, I want to show both Mr. Deschenes and Mr. Nyman made false affidavits regarding records of mine which are on file here now. The affidavits were made in September, 1962, ^(CR 44, 19539) and part of the record of this case which they said -- they both said they had no records of mine in their possession, or under their control. I think there was -- I forget the exact wordings. I want to show that at the time they made those affidavits, although they had sent me 193 documents which they had surreptitiously taken from my files, they then had them in their possession, and had them microfilmed -- approximately 250 pages of documents which they received from Mr. John Brady and which they knew were stolen from me by John Brady; pursuant to a program John Brady has followed in this District of stealing documents from taxpayers and turning them over to the Internal Revenue Service.

I will show by testimony that Mr. Nyman and Mr. Deschenes had in their possession this microfilm; that they saw the originals of some of those documents; that at the present time, and ever since some date in 1960, they have had possession of, and now have possession of, one of my documents which they did not produce pursuant to my motion to inspect, and it was not produced at any time.

THE COURT: What document is that?

MR. LENSKE: It's a document that they have admitted they have in their possession, regarding a timber contract. I would have to see it in order to give further details regarding it. I want to show through Mr. Deschenes and Mr. Nyman that they testified falsely regarding Exhibit 2184, which is the exhibit Your Honor felt justified my conviction. I want to show through their testimony that this was a stolen document -- known to be a stolen document, and the testimony they gave concerning it was inconsistent with the facts as they are.

I have already shown -- I have already shown -- I have attached to my affidavits a photostatic copy of one of the links in their testimony. It's a memorandum that Mr. Deschenes testified -- identified the date when he took the exhibit from my office -- from my building -- I should say from my file. I want to give further and more comprehensive testimony regarding this link in the chain of false testimony which Mr. Nyman and Mr. Deschenes have given regarding the testimony of my document, and the basic reason for it. These are in conformance of the testimony referred to in my affidavits. I have important tying links and amplifications which I believe the Court, in an unprejudiced manner and in exercising of his duties, should give me an opportunity to present.

This paragraph was added later and refers to a subsequent point. In using the Cauthorn (Ex 190) net worth statement without tying the item to my so-called net worth statement and vice versa, as Deschenes testified he did, I am being criticised and convicted for not using a double entry system of bookkeeping but Deschenes failed to use a doubly entry system in preparing my net worth.

The court erred in denying me the right to cross-examine a witness present in the courtroom whose ex parte affidavit was filed in opposition to my motion for new trial. (Albert Deschenes v. United States, 380 U.S. 400, 404)

Amendment VI U.S. Constitution.
Pointer v Texas, 380 U.S. 400, 404
Douglas v. Alabama, 380 U.S. 415, 418, 419, 421

In opposition to my motion for a new trial the Government filed an affidavit signed by Albert Deschenes (CR 48).

Albert Deschenes was present in the courtroom at all times on August 13, 1965 and I sought to have him testify.

Tr 91

MR. LENSKE: ...At least Nyman and Deschenes are here. Your Honor can get the full story of what the facts are relative to it. So, I beg the court to permit me to examine these people and witnesses regarding the items which I have already made some statement in my affidavits and motion for a new trial.

Tr 92

THE COURT: Objection sustained. I'm not going to hear Deschenes or Nyman today.

Pointer v. Texas, page 404, Opinion by Justice Black,

"And probably no one, certainly no one experienced in the trial of lawsuits, would deny the value of cross-examination in exposing falsehood and bringing out the truth in the trial of a criminal case."

Specification of Error 7

The court erred in denying me the right to cross-examine a witness whose deposition in a civil proceeding the Government had previously taken and which was introduced in opposition to my motion for new trial (Albert Deschenes).

Specification of Error 8

The court erred in denying me confrontation of witnesses whose testimony in a civil case was introduced in evidence by the Government and who were present in the courtroom at the time I was presenting argument and evidence in support of my motion for new trial. (John Brady, George Nyman, and Albert Deschenes).

Pointer v Texas, 380 U.S. 400, 404

Douglas v Alabama, 380 U.S. 415, 418, 419, 423

Amendment VI U.S. Constitution

Estes v. Texas, 381 U.S. 532, 540, 558, June 7, 1965

The Sixth Amendment to the U.S. Constitution guarantees an accused the right

"to be confronted with the witnesses
against him."

and

"to have compulsory process for obtaining
witnesses against him;"

On page 540 of Estes v. Texas Justice Clark says:

"Court proceedings are held for the solemn purpose of endeavoring to ascertain the truth which is the sine qua non of a fair trial."

In a concurring opinion Chief Justice Warren said on page 558:

"As the purpose of trial as a vehicle for discovering the truth became clearer, it was recognized that the Defendant should have the right to call witnesses and to place them under oath...."

* John Brady was subpoenaed but refused to appear.

Importance of Cross Examination

Mr. Alexander, the prosecutor, sought to substitute his argument for my right of cross examining Deschenes, Nyman and Brady. But even that argument bears examination. He says that the affidavits of Deschenes and Nyman (Tr 85, line 1 "were true and correct affidavits." He also said (line 13):

"The duplicate documents were turned back to the defendant. All the Government had at that time was microfilms given to them by Mr. Brady. Mr. Brady might have had the defendant's documents."

"Mr. Brady, in the very deposition the defendant points out, says he got all of his originals back. He gave the Government microfilms; although, there is some conflict. He contends he can't remember making the microfilms; but he that as it may, the point here is, there weren't any of the defendant's documents in the Government's possession at that time."

But I sought to show through cross examination and other evidence locked up tight in the fists of the Internal Revenue Service and the Justice Department that John Brady had been for the past ten to twenty years an agent of the Government; and, furthermore, that he got and held those and other documents of mine at the behest of the Internal Revenue Service.

And I contend that the Government does have possession when it takes or knowingly receives my records that were stolen from me and directs or permits the originals to be destroyed or concealed after copies (what is the difference

between a photostatic copy and a microfilm copy?) are made and delivered to and kept by the prosecuting agent (Deschenes).

Mr. Alexander goes on to say: "The only thing they had were microfilmed ones, and the other documents that counsel just referred to, which is a 1960 timber agreement. That agreement the defendant was told about in a deposition; I believe it was the deposition of Mr. Deschenes."

Surely this is a proper subject of cross examination. If Deschenes and Nyman did not testify falsely when they said they had no documents of mine while they knowingly held microfilm of mine, did they not falsify when they had one original document? Is this typical of what Mr. Alexander considers "true and correct affidavits"? And if they lied about one document why not permit me under the right guaranteed under the Sixth Amendment to the U. S. constitution to ascertain whether they lied about another one?

Doctored Evidence

A key item in my case was Exhibit 2184. I claim it was irrelevant, in no way improper and had nothing to do with my net worth or my taxes. But the trial court saw fit to "hang" me because of it. It is therefore a very important document. It was a key exhibit before the grand jury as well as the court. I claim it was outright stolen from me by the Internal Revenue Service. Deschenes claims that my secretary gave him the file that contained that exhibit. My secretary testified that this document was never in the file that Deschenes said

(Vol. 42, 4/2/63 pages 73 to 94, 19539)

50

was given to him. Deschenes admits he took that document out of my office surreptitiously, photostated it and returned it to the file. When asked when he took (he or Nyman) one hundred ninety-three documents from my files that they kept for several years (also surreptitiously) he could not give any date for the taking of any of the numerous documents.

But one document, Exhibit 2184, Deschenes could and did give the date he took that. How could he tell? He had a memorandum. Out came the memoranda, all seventy pages of them. This group of typewritten pages was all carbon copy, all seventy pages; except the bottom note (CR 8) on one page. This was the key note from which Deschenes could tell about the file that contained the original of Exhibit 2184. This note was not in carbon but in original typing. The deposition of Deschenes taken in the civil case I filed against him is Exhibit E. I asked him pertinent questions about this doctored memorandum but at the instruction of Mr. Alexander he refused to answer. My frustration was compounded when the trial judge in the civil suit stayed all proceedings pending the result of the criminal case.

IN THE LAW

IT IS MUCH EASIER TO PERPETUATE

AN ERROR

THAN TO CORRECT ONE

The court erred in failing to strike sua sponte prejudicial and wholly irrelevant documentary material filed by the Government in opposition to my motion for new trial. (CR 50 to 58)

Commencing on page 19 of the Clerk's Record is an affidavit of Richard D. Bennett, an attorney in Ocean Lake, Oregon, that on behalf of Empire Finance Corporation he turned over to me a check for \$2500.00 from Cimarron Insurance Co. for application on the mortgage against a theatre and that I made no claim to any portion of it for fees.

On page 22 of the Clerk's Record is an affidavit of Winnifred Jones, who together with her husband, owns a bakery in Ocean Lake, Oregon. She stated that she was president of Empire Finance Corporation and that this \$2500.00 insurance check was delivered to me in trust and that I did not claim any portion of it as a fee.

On page 23 of the Clerk's Record is an affidavit by O. G. Larson an attorney with 45 years practice, who represented Henry and Helen Johnson, mortgagees of the theatre, the damage to which was the consideration for the Cimarron Insurance Co. check for \$2500.00; that he had the check endorsed by the Johnsons to me and that it was not a fee and that it, together with \$4500.00 from an additionally \$5000.00 that was held by me for the Slaney family were invested in the Swan Drive In Theatre for the benefit of the Slaney family; that he had personal knowledge of the facts as he participated in the organization of the corporation and the redemption by the corporation of the Swan Drive in Theatre for \$15,000.00.

The \$2500.00 and \$5000.00 trust moneys for the Slaney family were deposited in my bank account. (Ex S-1, 5/1/58, 6/24/58)

Albert Deschenes testified that he presumed that the \$2500 deposit was a fee and investigated no further. He did not include the \$2500.00 or the \$5000.00 as a liability in the net worth statement and the court accepted his version. He also showed the \$7000 investment of \$7000.00 in the Swan Drive In Theatre as an asset (CR 1116, line 19, 19539) mine and not of the Slaneys. (Vol. 49A, 7/17/63, 1183-5, 19539)

Now, what was the answer by the prosecution to these affidavits? Nothing from pages 42 through 49 but pages 50 through 58 are a certified record of a recent conviction of Charles Slaney in Seattle, Washington on a felony charge.

The new evidence was conclusive on the two items of \$2500.00 and \$5000.00 to add to my liabilities for 1958 and almost wipe out 1958 deficiency. Yet the court denied my motion. It may, therefore be presumed that the court, instead of sua sponte striking the conviction record, used that as the basis for denial of my motion.

This was basic error. I could find no authorities and can not conceive of any principle under which a subsequent unrelated conviction of a person for whom a transaction was had by a lawyer could possibly affect the nature of that transaction. Certain conviction of Mr. Slaney could not impeach the credibility of Richard Bennett, a lawyer in Ocean Lake, Oregon, or Winnifred, a business woman of the same community or O. G. Larson, a lawyer of 45 years experience. I submit that the court erred in not striking sua sponte the eight pages commencing with page 50 and crediting me with a reduction of \$7500.00 in my 1958 net worth.

Deschenes re my bank accounts and Cimarron \$2500 check

Q (page 1182 line 22) And so far as you know, all the bank accounts that he had during this period of time have been referred to and have been taken into consideration in the preparation of Exhibit 820 first amended, have they not?

A Yes.

Deschenes re Cimarron Ins. Co. \$2500.

Q (page 1183 line 2) I have another deposit slip here, or memorandum going with a deposit slip. This relates to the deposit of June 24, 1958 and it shows a deposit with respect to which the source is Cimarron Insurance Company, Inc. It shows the source or it is a check to Empire Finance Corporation and Henry Johnson and Helen Johnson in full settlement of loss under wind policy in the amount of \$2,500. Did you do anything with respect to that item? (from Exhibit S-1)

A May I have the date of that again? (line 14)

MR. BURDELL: The date is June 24, 1958.

Q (page 1185 line 5) The figure I have referred to is the figure of \$2500 under the heading "Cimarron Insurance Company, Inc., to Empire Finance Corporation and Henry and Helen Johnson, in full settlement of loss by wind policy, \$2,500." This was a deposit in Mr. Lenske's bank account, and I am asking you if you took it in consideration in the preparation of Exhibit 820 or 820 first amended.

THE COURT: ...Are you directing your inquiry to investigations, or as to whether the \$2500 was taken into

consideration in the summary sheets?

Mr. BURDELL: I asked him if he took it into consideration in the preparation of Exhibit 820 or 820 first amendment. The question goes both to the investigation and also to the dollars and cents, your Honor.

THE WITNESS: No, I didn't find any expenditure against it and I just left it there.

Q And by leaving it in, without making any investigation as to whether or not it was withdrawn for a business purpose or for some other nontaxable purpose, the result was that you charged him with taxable income to the degree of that \$2500; isn't that correct?

A Thought of it as a fee.

Q You thought of it as a fee when it is marked "In full settlement of loss by wind policy"?

A That is true. But it never was paid out.

DESCHENES FAILED TO INVESTIGATE

Q (page 1187 line 7) Did you check with either the Cimarron Insurance Company or the Empire Finance Corporation or Henry Johnson or Helen Johnson to determine whether or not this was a fee?

A Well, I don't recall right now whether I did or not.

The court erred in its assumption of material facts in the record when the opposite was true.

a. The court's assumption that no previous checks had been issued by me to Mary Nevens relating to her properties. See Ex J-1, 19539, admitted in part, withdrawn and reoffered.

b. That the unused gift certificates signed by her would have stripped her of practically all her property.

For the Court to be so wrong in its assumption of facts on two such matters that affected the court so much explains, at least in part, how the Court could be so wrong in its other conclusions.

The only reason the court said (Tr 56) that the \$500 check I gave her that morning was the only check she had received from me from the properties was because the Court believed it was the only such check and the reason it believed it was because it wanted to so believe. It was error for the Court to refuse to admit J-1 (Vol. 57, 4/21/64, pages 2,667-9 and 2,701-3, 19539) since it placed unwarranted significance to it not justified by the obvious facts. There were thousands of dollars of checks issued by me to Mary Nevens from the properties and this was but one of them.

The two unused gift certificates (Brier of Appellee, Appendaix 1a and 3a, following page 88) totalled \$48,000 to members of my family and the total consideration for the sale of the Doan property was \$100,000. (Vol. 18, 3/18/63, 176, 19539) The total is roughly half as I said (Tr 57) instead of "practically all" (Tr 57) as Judge Carter said.

THE COURT: This is the woman who had all this (Tr 56) property in her name, and you probated her husband's estate and transferred it to her name. The only money she had received from this property, which was reportedly to be hers and her husband's, was the \$500 you gave her just before she testified. Isn't this the same case I am thinking of?

THE COURT: (Tr 57 line 11) Was that the only money she ever got?

MR. LENSKE: No...

Exhibit J-1 is a photostatic copy of numerous checks which I had issued to Mary Nevens from her properties. This illustrates how blinded the court was to the material evidenciary facts in the case because of his emotional outlook toward me. Again let us look at the record:

THE COURT: (Tr 57 line 23) This is the same woman who, although had the property in her name, had gift certificates to you and your family on practically all the property she ha

MR LENSKE: That again isn't true.

THE COURT: If those gift certificates had gone through, what assets would she have had?

Mr. Lenske: ...in round figures, she would have had half and my family would have had half.

Specification of Error 11

The court erred in denying my motion for new trial and in ignoring the numerous uncontradicted affidavits of disinterested responsible persons and supporting documents showing:

a. Mandatory reductions in my net worth on each of the counts sufficient to eliminate any deficiency.

(1)- Eleanor Bertrand

Chronology

- April 18, 1957 - Check by Bertrands to Reuben Lenske for \$3911.12 (Ex Y-1)
- April 18, 1957 - Notation "Paid me April 18, 1957" on statement found by William Marx in my file. (CR 871, 19539) (Vol. 57 pages 2669 to 2700, 4/21/64, 19539)
- July 1, 1957 - Payment of \$1500 by Bertrands to Reuben Lenske (Vol. 15, 3/15/63, page 114, line 3, 19539) (Y-1)
- Dec. 4, 1958 - Mortgage by Eleanor Bertrand to Reuben Lenske for \$2500. (Ex 2273)
- September, 1959 - Judgment, Albers Milling Co. v. Eleanor Bertrand, for \$11,000 on 1951 obligation. (CR 110)
- Nov. 5, 1959 - Eleanor Bertrand Bankruptcy petition filed (CR 105) Lists under Creditors Holding Securities - Reuben G. Lenske, 3d mortgage for services contracted in 1958 for - \$2500. (CR 109) No listing of any indebtedness to Reuben G. Lenske under unsecured creditors. (CR 110)
- Nov. 27, 1959 - Referee's memo says bankrupt said mortgage to Reuben Lenske was given for legal services and loans made largely to bankrupt's husband (CR 122)
- April 9, 1961 - Letter by Eleanor Bertrand to Albert Deschenes that loans were repaid and mortgage was for future services and that "Mr. Lenske has helped me immeasurably. (Ex G-3 and CR 9)
- Nov. 16, 1962 - Affidavit written by Glen Tellgren, Albert Deschenes' emissary and signed by Eleanor Bertrand (Ex I-3) See gist two pages forward.

March 15, 1963 - Testimony of Eleanor Bertrand (Vol. 15,
pages 112 to 127)

Substance of Testimony

BY MR. ALEXANDER:

Q (page 115 line 18) Have you made any payments on this mortgage?

A No, I have not.

Q Other than the \$1500 and the mortgage, have you repaid Mr. Lenske any of the moneys that you and your husband borrowed?

A Yes. I believe there were payments. My husband would borrow money for a time to make improvements on the place, and then he would pay back some. They were mostly handled by him and Mr. Lenske, and I really don't remember, nor do I have any records.

Q Did this mortgage on your home represent the total that was owed Mr. Lenske, do you know?

A Well, it also represented services that Mr. Lenske had rendered to us over a period of years, and he was still rendering to me.

Q (page 124) Other than the \$1500 from the fire, there has been no repayment of these moneys, has there?

A I don't know what repayment there was of moneys in '56, '57 and so forth. But after -- well, at the time I made up the mortgage, that was, you know, to take care of anything we owed him and for services.

BY MR. LENSKE - cross examination

Q (page 125) Do you recollect that the \$2500 mortgage was in anticipation of considerable legal work that would have to be done in the future?

A That was the understanding.

Q And was that the purpose of the \$2500 mortgage?

A Yes.

Q ...isn't it a fact that when you received the insurance money, there was sufficient money with which to pay me any balance for advances that I had made for you?

A ...I believe so...

Substance of Testimony of Eleanor Bertrand

on July 19, 1963 (Vol. 50)

BY MR. BURDELL:

Q (page 1489) And what occasioned you to write that letter (G-3, also CR 9)?

A I received a phone call from Mr. Deschenes, who said he was an Internal Revenue Agent, and he talked to me over the telephone and then he asked me to confirm what we had talked about by writing a letter to him, and I did that.

(Note - Mr. Deschenes did not rebut this)

Q And in your letter, which is Defendant's Exhibit G-3 (also CR 9), did you correctly state the facts?

A To the best of my knowledge, I correctly stated the facts in my letter, yes.

Q (page 1490) Now, the affidavit (Ex I-3) states:

"Then in December, 1958 I gave Mr. Lenske a mortgage for \$2500, which he stated was the approximate amount I owed him at that time. I still owe him this \$2500 plus the charges for

and later years."

Is the letter correct, or is the affidavit correct?

A The letter is absolutely correct.

Q Do you want to explain?

A I talked to -- I don't remember what his name was -- the young fellow that came to the house, and he wrote this out and I signed it. I didn't at the time realize that he had written "he stated was the approximate amount I owed him," because Mr. Lenske never did state I owed him any approximate amount.

BY MR. ALEXANDER: Cross Examination

A (page 1491)...according to his figures there was a difference of \$2500 and I assumed the Government's figures are right....But at the time I gave Mr. Lenske the mortgage it was to cover for the fees, because I was going through the time of a lot of indebtedness.

Q Did you read the bottom of it where it says:

"I fully understand this statement and it is true, accurate and complete to the best of my knowledge and belief"?

A Yes, sir. He showed me some figures and he said that there was \$2500 still owing on old figures from the statement he had. But Mr. Lenske never did say that I owed him \$2500, and to the best of my knowledge I thought everything was paid up.

A (page 1498) At the time I wrote this letter it was my understanding, but after talking to the Government agents

didn't know how much I owed him, and I have never talked
to Mr. Lenske about how much I owe him, but at the time I
gave him the mortgage what I said in this letter was true.

Q (page 1499) What was the check to represent, ma'am?

A Monies due him for previous loans and so forth.

Q And you have never considered part of the check
services that you were paying Mr. Lenske for?

A I have no idea because my husband handled it before.
I made out the check on my husband's orders.

Q Well, then, do you know what the check was for, ma'am?

A I know it was for loans Mr. Lenske made us.

Q (page 1500) Then my question is quite simple. Do
you know what this check is for or don't you, ma'am?

A I am fairly certain it was for loans Mr. Lenske
made us.

Q What did your husband tell you, as your testimony now?

A Well, after all, I know it was for covering things
that Mr. Lenske had loaned us but I don't -- I don't remember
exactly.

Q You don't remember, do you, Mrs. Bertrand?

A No.

MR. BURDELL: (page 1504)

Q Do you have the slightest concern about whether he
will ask you or what he will do as a result?

A Mr. Lenske has always treated us very kindly. He has
helped us out when we needed help...I have never had any reason
not to trust him.

Q (page 1505) Now, did you have a telephone call from Mr. Deschenes within the last three or four days?

A Yes, about two nights after -- oh, let's see, last Monday night, I believe it was.

Q What was that conversation?

A Well, he seemed quite upset over the fact that I found that check and he asked me -- he told me that I could get in trouble for making false statements. I have never at any time made any deliberate false statement.

(Note - Mr. Deschenes did not deny this)

Q Is that all the conversation you recall? Is that all he said -- that you could get in trouble?

A Well, I don't know; I just felt quite worried after the phone call -- concerned, because I hadn't meant to make any false statements.

Q Getting back to the letter you wrote to the Internal Revenue Service, which is Exhibit G-3 (also CR 9), this letter was written before anyone came out and gave you a lot of figures and a lot of conversation; isn't that right?

A Yes, it was.

Q And it is correct, is it not?

A Yes, to the best of my knowledge, this letter was correct.

THE COURT: And you wrote this letter, Exhibit G-3 yourself?

A Yes I did...(page 1508) I definitely wrote the letter myself and I didn't even call Mr. Lenske before I wrote it.

Eleanor Bertrand Chronology Continued.

- Feb. 12, 1965 - Affidavit of Eleanor Bertrand confirming:
(CR 6)
(Filed Feb. 15, 1965)
1. That the check for \$3,911.12 was for repayment of advances and not fees.
 2. That the statements in her letter of April 9, 1961 (G-3 and CR 9) are correct.
 3. That insofar as the statement of Nov. 16, 1962 (Ex I-3) differs from the contents of the April 9, 1961 letter the Nov. 16, 1962 statement is incorrect.
 4. That the \$2500 mortgage was given for future services to help preserve her homestead and that all advances had been repaid.
 5. That she had located the original statement of advances on which the \$3,911.12 check of April 18, 1957 was issued and deposited with her attorney in Oregon City and a copy of which is CR 10.
 6. That she also found the original check stubs which included the stub for the \$3911.12 check and that she had written on the stub the word "loans" to describe what the check was for.
- Feb. 7, 1965 - Affidavit of Bruce W. Bertrand, son of
(filed Feb. 15, 1965) Eleanor Bertrand (CR 10), that after last Christmas (Dec. 25, 1965) he saw his mother go through the old records in which she found the statement for \$3,911.12, CR 10 and the check stub for the check in the sum of \$3911.12.
- Feb. 5, 1965 - Affidavit of John C. Anicker Jr. (CR 11)
- Filed Feb. 15, 1965)
1. That he is one of the attorneys for Eleanor Bertrand.
 2. That in January, 1965 she brought to him the original statement for \$3911.12 of which CR 9 is a copy and the original may be checked in his office by either party.
- Feb. 29, 1965 Affidavit of Harry Thrall (CR 13) that he did masonry work for the Bertrands and that he received full credit for the \$828.59 appearing on statement on CR 8.
- Filed Feb. 15, 1965)

Feb. 12, 1965 - Affidavit of Harry Thrall that he is a
brick and cement mason (CR 14) that L. J.
Bertrand agreed that, upon purchasing
the masonry equipment from bankruptcy
estate he would resell to Thrall.
Filed Feb.
15, 1965.

That he did purchase and did resell.

That Reuben Lenske advanced the money
for Bertrand and that Thrall would repay
the first \$1545 to Reuben Lenske.

That he did repay by work and money
in 1957 and 1958.

Summary

1. The \$3911.12 check from Bertrands to Reuben Lenske together with the \$1500.00 check repaid Reuben Lenske for all advances that he had made for them.
2. The December 4, 1958 mortgage from Eleanor Bertrand to Reuben Lenske for \$2500 was given as security for future legal services and to assist Eleanor Bertrand to retain her homestead - and it did.
3. The Bertrands owed nothing to Reuben Lenske on December 31, 1957 or on December 31, 1958 for net worth purposes.
5. The item 213A on line 34 of page 1116, CR, 19539 should eliminate \$5472.15 for 1957 and 1958. Since this sum exceeds the deficiency found of \$4990.41 (CR 1072, 19539), Count II should be dismissed.
6. In view of affidavit of Harry Thrall (CR 14) and failure of prosecution to follow up lead Reuben Lenske's net worth should be reduced by \$1545.00 for 1957 and/or 1958, he to be given the benefit of the doubt as to year.
7. The general effect on Deschenes' testimony will be considered later together with Tarlow and other items.

Judging a Judge

The Bertrand testimony is extremely important in evaluating Judge Carter's evaluation of Mrs. Bertrand and myself on the one hand and Mr. Deschenes on the other. Perhaps it explains how Judge Carter is so wrong in the rest of the case.

Judge Carter has profound respect for the ability and integrity of Mr. Marx, a CPA who had been the head of a fraud squad for the Internal Revenue Service for the Pacific Northwest States (Vol. 57, 4/21/64, 2,698, 2,699, 19539):

THE COURT: ...He (Marx) is a fine tax man. I will pay him that compliment.

THE COURT: You (to Marx) are an expert in the field of tax matters, and I'll pay you a high compliment -- any time you need a recommendation as a man who has been thorough and diligent, have them talk to me or write to me.

Mr. Marx, as per his affidavit (CR 968, 19539) and his testimony in open court, Vol. 57, 4/21/64, 2,680 to 2,689, 19539, found an L. J. Bertrand (Eleanor Bertrand's husband who died in 1959) file that he had not come across before. In it he found the statement (CR 970, 19539), which details the advances made by me to the Bertrands and says in my handwriting "Paid me April 18 1957". There are several other items in my handwriting in ink.

To an open minded judge this evidence along with the cancelled check of April 18, 1957 to me from the Bertrands and my testimony and Mrs. Bertrand's testimony would be

conclusive beyond a reasonable doubt that I was paid \$3911.12 on April 18, 1957 for previous advances.

But here is what Judge Carter said:

Vol. 57, 4/21/64, page 2672:

THE COURT: ...I have serious doubts as to the material he (Marx) found in the files; not doubts as to Mr. Marx, but doubts as to how there appeared in the file a sheet with computations that finally add up, with certain subtractions, to the \$3,911.12...and I have serious doubt as to the authenticity of the summary shown therein.

And on page 2671

THE COURT: I don't question Mr. Marx's integrity and I believe this affidavit where he says, "I searched various files and found a file entitled 'Lee J. Bertrana.'" I do seriously question how it happened that this file that is discovered by Mr. Marx long after the trial. I am not questioning Mr. Marx. I know that he found the file entitled "Lee J. Bertrana." I have serious doubt as to whether or not the defendant didn't make it possible for the file to be somewhere where Mr. Marx was looking.

Judge Carter is so blinded with unwarranted prejudice against me that he concludes that I planted a file for Mr. Marx to find and that Mr. Marx, who is intelligent and has integrity and diligence, fell for the plant. But that is quite insignificant unless, as the judge says: "and I have serious doubt as to the authenticity of the summary shown therein."

In other words I must have made up a fake statement that fooled Mr. Marx but didn't fool the court. Here is where the court shows its misjudging me and its unwillingness to examine the evidence, piece by piece, on each item before coming to a conclusion on that item.

To really plant a file to fool a man with the ability of Mr. Marx would be a petty and useless act, which in itself would have no significance and would necessarily lead to the resignation of the accountant. I pride myself with at least sixth grade brains sufficient to avoid such an act.

But the statement itself, the summary, as the judge called it, is another matter. In announcing his findings from the bench Judge Carter had said two months earlier, Vol. 57, 2/28/64, page 2538)

"Now there is under submission to the Court the matter, the Bertrand matter, No. 4, involving the \$3,900 check. There is no way this check pays off an account. You can try the figures any way you want. The defendant claims that it was payment on account. The Court finds it was payment of an attorney's fee and not on a running account."

It was important, if there was to be any change of mind on the part of the trial judge, to show him more than the substance of having "\$3,900" coming for advances and its application accordingly. It was important to satisfy the

judge's mind that there were items that added up to \$3911.12. And that is what Mr. Marx set out to do.

But, as important as it was to find where that \$3911.12 came from exactly, only a person lacking in brains as well as integrity would fake such a statement. That statement has three items in handwriting in ink and it is obviously my handwriting. There is a considerable amount of typing on the statement, or summary, as the judge calls it. My opponent is the United States of America, the richest and most powerful nation in the world with experts following its heels (ask Elmer Kolberg). Money has been no object in the Government's pursuit of me. The Court made its finding on Feb. 28, 1964 and we are between the date of that finding and April 15, 1964 when Mr. Marx found the L. J. Bertrand file. We are then seven years, lacking a few days, from April 18, 1957.

Who, with no integrity, but with a modicum of brains would fake a statement purporting to have been typed and written seven years earlier?

And here I come back to judge the Judge. If he were not so blinded against me he would ^{have} looked for the evidence; he would have instructed the prosecutor to have the summary analyzed for its current vintage or 1957 vintage as to both the typing and the writing. He could have then judged me

on evidence, not on conjecture, suspicion and prejudice.

But the manufacturing was at the other end, not on my end. I did not charge the Bertrands a fee of \$3911.12, the Bertrands did not agree to pay me a fee of \$3911.12 but Judge Carter created a fee of \$3911.12 for us.

That phase passed, however, and then we came to the current phase. Almost a year later Eleanor Bertrand found the original statement of which mine was a copy. She also found her check stub with her own handwriting showing that the check was for the payment of loans.

This original statement and the handwriting on the stub were made available to the Government for analysis. I say that no unprejudiced judge would refuse the challenge to ascertain the truth or falsity of that statement and that check stub. And none but an honest person like Mrs. Bertrand would submit them on her own responsibility under oath through her attorney for such analysis. And it must be remembered that Mr. Deschenes had already threatened her about making false statements and that she was already afraid of him, not of me.

Therefore the Bertrand item is more important than wiping out Count II. It shows that the trial judge misjudged me as to both intelligence and integrity, that he mis judged Albert Deschenes, who engineered a false statement from Mrs. Bertrand. It shows that the trial judge was not of a frame of mind open enough to judge me fairly on the other issues in the case.

a. Mandatory Reductions

(2) Cecil and Margaret Doan

The affidavit of Margaret Doan appears on page 15, CR and the extended affidavits appear on pages 16, 17 and 18. Margaret Doan's supplemental affidavit appears on page 83, CR and the pertinent page of the Doan tax return for 1958 appears on page 84, CR.

The substance of the affidavits is simple. The Doans sold their home to the Lloya Corporation for \$100,000. They had previously transferred a three tenth interest in the property to my law partnership, Lenske Lenske, Spiegel and Spiegel. I received the downpayment of \$28,500 on December 31, 1958. Seven tenths of it belonged to the Doans, \$19,950 and the remaining three tenths, \$8,550, belonged to my law partnership. The Doans reported the sale on their tax return for 1958 at \$70,000 and showed \$19,950 received in 1958.

The court's finding, CR 1116, 19539, shows, line 32, F 213, an account receivable to me 1954 to 1957 but there is no showing of an account payable to them by me on December 31, 1958 to reflect my indebtedness to them for \$19,950, which is reflected in my bank deposits for that day. The \$8,550 should show as a liability by me to the partnership. Any credits for disbursement by me to the partnership on December 31, 1958 should reduce that \$8,550 liability accordingly.

This is the only appropriate and logical method of showing true net worth. Adjusting book entries made subsequently for convenience should in no way change or affect my true net worth at the end of the day on December 31, 1958.

Since the amount necessary to wipe out 1958 deficiency is less than \$10,000, this item, without having to resort to any of the other items in issue, should wipe out 1958 deficiency and result in dismissal of Count III.

There are major disadvantages to a taxpayer in the use of the net worth method to ascertain his income. The method should not be shifted in specific instances to the further disadvantage of the taxpayer.

In the following pages is the essential testimony of Margaret Doan given at the trial showing the exhibit references.

The court should not permit itself to be confused by consideration of a transaction that might have taken place but didn't. In most criminal cases the defendant urges before a jury complications and ramifications that will becloud simple facts. I regret to have to state that in this case the prosecution is seeking and thus far has successfully sought to becloud and befog the simple facts from a net worth standpoint.

Margaret Doan's Testimony

Vol. 18, 3/18/63, page 161, 19539

By Mr. Alexander

Q Now, Mrs. Doan, are you familiar with the property at 828 N.E. Multnomah Street?

A Yes.

Q Did you at one time own that property?

A Yes, that was our home.

Q Is that the property that you ended up selling to Lloyd Corporation out here for a shopping center?

A Yes, sir.

page 164

Q ...did there come a time in 1955 when you and Mr. Lenske and Mr. Spiegel made an agreement with respect to the proceeds or with respect to the legal fees concerning this property?

A Yes.

page 165

Q That was signed about February 15th, 1955?

A Yes.

Q This was the agreement that provided for the legal fees in connection with this property: is that right?

A Yes.

MR. ALEXANDER: The Government moves the admission... being an agreement of February 15th, 1955, executed by the Doans, Lenske and Spiegel...Exhibit 2302. (Received)

BY MR. ALEXANDER:

Q In this 1955 agreement that you made, Mrs. Doan,

proceeds when the property was sold; is that right?

A Yes.

Page 172

Q Then you did sell the property; is that right?

A Yes.

Q That was sold to Lloyd Center?

A Lloyd Corporation.

Page 173

Q What was the occasion for your asking that the deed be placed in Mary Nevens' name?

A We were going to trade our property there in Holladay addition for some property, and we thought it would be a good investment.

Q. Then we decided that we wanted the cash instead of the trade.

Page 174

Q Now, the trade didn't go through, did it?

A No.

Q But the deed to the property that was sold to Lloyd Corporation was made out to Mary Nevens?

A Yes.

MR. ALEXANDER: The Government moves the admission of Government's Exhibit...No. 727, a deed from the Doans to Mary Nevens dated December 31, 1958 ...and also moves the admission of Exhibit 728, a deed from Mary Nevens to the Lloyd Corporation dated December 31, 1958. (Received)

Page 175

Q Now, when the sale was made to Lloyd were the negotiations handled by the defendant?

A Yes.

Q And you approved the final purchase price?

A Yes.

Q When would that have been, Mrs. Doan?

A Well, it was sometime the latter part of...
'58, or the first of January, '59.

page 176

A And they started out with an offer of \$14,000 first.

A ...the Lloyd Corporation...told us at one time that \$30,000 was as high as they would go; that we could take it or leave it; that they wouldn't go any higher.

Q But finally they agreed to pay you \$100,000; isn't that right?

A Yes.

Cross-Examination by Mr. Lenske page 179

Q And then was it with your knowledge and consent that it was to be done that way?

A. Yes.

Q And it was arranged that the money was to be paid to me and that I should divide the money between yourself and my firm as attorneys?

A Yes

Q And was that done in accordance with our understanding and what was desired by you?

A Yes.

a. Mandatory Reductions

(3) Depreciation - Elmer Kolberg, Gov't Appraiser

On pages 25-27 are my affidavit and excerpts of the testimony of Elmer Kolberg in a criminal case in this District that was tried subsequent to mine. Elmer Kolberg was the successful Government appraiser in that case as well as in mine.

The substance of Kolberg's testimony in that case is that "the bulk of my (his) work is for governmental bodies" and that he always testifies to lower values on behalf of the Government than property owners and their appraisers in condemnation cases.

In my offer of proof required of me by the Court I said (Tr 78):

"I want to further show that the bulk of his income with slight and rare exceptions, is from testifying for Governmental bodies; by testifying and appraising values at less than what the property owners in numerous condemnation cases, or their respective witnesses testifies as to what the values are."

The court erred in requiring me to make an offer of proof of what a biased Government witness would say instead of letting me examine that witness on the stand.

Since the court accepted Kolberg's testimony as gospel (CR 1054, 19539) and since the impression given by Kolberg in my case (Brief of Appellee page 10) and found by the court (CR 1054, Tr. 249-53, 19539) was that Kolberg did

general appraising as well as Government appraising and since appraisal as accepted by the Court was a sine qua non for finding deficiencies against me for all four years, it was extremely important that the newly discovered evidence that I hoped to show from his testimony, that Kolberg was not really an independent appraiser but a Government appraiser with a cloak of independence, be introduced.

I have already shown in my brief in 19539 that:

1. Kolberg admitted that he did not inspect the interior of all the properties he appraised (page 4).
2. Kolberg gave no consideration to what occurred to the properties between date of acquisition and date of inspection, which sometimes was fifteen years (page 5).
3. Kolberg failed to consider the income or loss factor in determining economic life.
4. Kolberg used cash values for properties on contract (page ^{future} 6).
5. Kolberg gave/economic life to buildings that had already been removed and replaced by new buildings. (page 10)
6. Kolberg did violence to fair and competent appraising. (pages 7 to 20)

I should have been allowed to administer the coup de grace to his testimony by showing that he misrepresented his true status when he testified against me. His testimony in the subsequent case (CR 26, 27) was a clue. I should not have been required to delineate to the court what he would say when \$10 more per month per property in depreciation would have wiped out all deficiencies.

Specification of Error 11

a. (3 $\frac{1}{2}$) See " 9

a., (4) Pierce properties, checks show it was

not uncommon for me to issue checks for income taxes for other people, affects 1958 and intent.

The court held against me on both ownership and intent related to taxes in my relationship to Mr. Pierce with respect to whom I prided myself as having dealt as one human being should towards another when he is in less fortunate circumstances. Ultimately, as in most instances does not happen, in this instance it turned out to be for my benefit.

The court based its holding against me on this item and, because of it, perhaps on all others, because I had paid Mr. Pierce's income tax for the year involved.

Like in the Bertrand matter it was appropos to look for evidence that meet the expressed wrong interpretation given by the Court. This I did by finding other income tax payment checks for Mr. Pierce and for others. I produced some of such checks in support of my motion for new trial.

However, to understand this matter it is urged that the court read pages 696 to 699 of the Clerk's Record, 19539.

a. Mandatory Reductions

(5) A. L. Prater

Mr. Prater's affidavit and supporting exhibits appear on pages 34 to 38 of the Clerk's Record. There is no counter affidavit. It shows truck and business use automobiles repair work done by Prater for me during the years in issue. The total comes to \$1932.69. My net worth should be decreased accordingly, especially \$1208.56 charged to me in CR 1117, F 139C, line 11, 19539. This was a payment of taxes on property in Lincoln County. If, as apparently was done, the Government treated my payment of those taxes a payment for the Praters, that should have constituted an offset against or a payment on the trucking repair services rendered and charged to me by Prater. This \$1932.69 reduction is more than 10% of the total deficiency found against me for the four years and is therefore substantial but it is more important for another reason.

Albert Deschenes investigated this matter and was shown the copies of the ledgers with these charges. And these were also shown to the prosecutor. This evidences deliberate disregard of a substantial item for which the prosecution had a lead and the disregard of the item because it was favorable to me. Adding this to the other wrongdoing by Deschenes, his net worth statement should be stricken.

whose testimony in a civil case was introduced in evidence by the Government and who were present in the courtroom at the time I was presenting argument and evidence in support of my motion for new trial. (George Nyman, Albert Deschenes, and John Brady, who was subpoenaed and refused to come)

9. The court erred in failing to strike sua sponte prejudicial and wholly irrelevant documentary material filed by the Government in opposition to my motion for new trial (CR 50 to 58).

10. The Court erred in its assumption of what it considered material facts in the record when the opposite was true from a factual standpoint.

- a. The Court's assumption that no previous checks had been issued by me to Mary Nevens relating to her properties.
- b. That the unused Mary Nevens gift certificates would have absorbed practically all of her properties.

11. The court erred in denying my motion for a new trial and in ignoring the uncontradicted affidavits of disinterested persons showing

- a. Reductions in my net worth on each of the counts sufficient to eliminate any deficiency.
- b. The utter unreliability of the two agents whose testimony was the sine qua non of the indictment, the net worth statement, and the judgment.

a. Mandatory Reductions

(6) Aremel Depreciation

On pages 39 to 41 of the Clerk's Record are my affidavit and the affidavit of David Raffety. They relate to a commercial fishing boat that was put in a corporation by that name but which was operated by Raffety and myself as a partnership and on which partnership returns were filed through the year 1954.

They show that at the end of 1954 Raffety relinquished his interest in the boat to me and that commencing with the year 1955 I was the sole owner. The boat deteriorated rapidly after that and was a total loss in 1959. I made two errors. I neglected to claim depreciation on my increased cost of \$3000 and therefore understated my depreciation. I made the further error of claiming depreciation both on my personal return and on the Aremel corporation return. (Folders 4A and 4K) The corporate depreciation was meaningless as it had no income and I operated the boat as an individual.

I should be given the benefit of any doubts and allowed depreciation of \$1460.00 for each of the years in issue. This item is again important because my investment in it shows up in Exhibit 190, the Cauthorn net worth statement which Deschenes used as an anchor whenever he chose. He completely ignored this beginning net worth asset and, added to other intentional omissions, should vitiate his testimony and Government net worth statements.

Specification of Error 11

a. Mandatory Reductions

(7) L. W. Taylor \$2000 Mortgage

On CR page 58(a) to 58(f) and 58(k to n) appear affidavits and supporting documents. The court found (CR 1117, 19539) that a mortgage from L. W. Taylor to Kriss for \$2000 was (F 182 Ex 609) an asset of mine. There was no evidence in the record to support that conclusion.

However, I discovered in 1958 that this mortgage was worthless.

I arranged for a \$2000 loan to L. W. Taylor to be secured by a mortgage on real property. The title report shown me dated December 2, 1957, showed Lot 2 Block 89, Irvington, Portland, Oregon, free and clear in Josephine F. Goodale, except about \$300 in taxes.

On the following day, December 3, 1957, the mortgage was executed by Taylor to Kriss along with a deed from Goodale to Taylor and the \$2000 was paid to Taylor. However, Taylor had substantial Federal tax liens against him that attached to the property immediately upon recording of the deed from Goodale to Taylor. See title report of January 14, 1958, (CR 58 M & N). The property was foreclosed for County taxes. This worthless asset should be removed from my net worth for 1958 to the extent of \$2000.

Specification of Error 11

a. Mandatory Reductions

(8) Rebecca Tarlow

On pages 58g to 58j is my affidavit re Rebecca Tarlow and on page 58-o are a cancelled check for \$3000 and one dated July 13, 1956 for \$5000, both from Rebecca Tarlow to me. On page 58P of the Clerk's Record is the first page of Rebecca Tarlow's affidavit signed at the request of and prepared by Albert Deschenes. It is marked Ex W 2358 under file No. 19539.

The prosecution's answer to the Rebecca Tarlow item appears on page 97 through 103 of the Clerk's Record and includes an answer on page 98 to the L. W. Taylor item. The Rebecca Tarlow item is important for two reasons. It shows unmistakable overstatement of my net worth for the year 1956 by \$5000 and wrong figures for each of the other years in issue. The check I received and the deposit in my account (S-1, 19539) and the mortgage given as security are not denied by the prosecution. Both the Court and the prosecution frustrated previous attempts on my part to get that part of the record straight. However, Rebecca Tarlow sued me in the State Court for \$31,500 and I took her deposition as an adverse witness and, reluctant as she was to give out with it, enough truth came out to grant me a new trial or dismiss all counts.

Mrs. Tarlow testified at the trial (3/21/63, Vol. 20, pp. 131-141) but that the affidavit signed by her at the request of Albert Deschenes was correct. See CR 98, Government's Opposition to New Trial, in which it quotes her from page 141 of the transcript:

A. Yes, that is correct, because we went through those very thoroughly at the time."

Mrs. Tarlow presumed that the statement prepared by Mr. Deschenes was correct and I presumed that both she and Mr. Deschenes were correct (Tr44, 45, 46). So the starting point is that, as per Mrs. Tarlow's testimony in the deposition, (CR 58-H):

1. She turned over all her records to Mr. Deschenes.
2. Deschenes came to see her at the hospital (CR 58-I).
3. He told her the affidavit was prepared from her material.
4. The memoranda had been furnished to him.
5. The affidavit prepared by him and signed by Mrs. Tarlow vary substantially from the records themselves.
6. The variance is between \$28,500 and \$39,000 or \$10,500 and the most glaring example of the variance shows up in the \$5000 check of July 13, 1956.

Conclusion
from new Tarlow evidence

If I am right about this glaring misstatement by Deschenes as evidenced by this new evidence from Mrs. Tarlow then the case should be dismissed. If I am wrong about it I challenge the prosecution to say so, not to

say that Mrs. Tarlow once testified the other way, not to say that I should not have relied upon Mrs. Tarlow and Mrs. Deschenes to tell the truth, not to say that I should not have been so ignorant, but to say in its answering brief that the statement prepared by Mr. Deschenes from Mrs. Tarlow's records is correct. If the prosecution believes it is not correct I challenge it to prepare and show in its brief a correct statement ^{of} ending balances each year on Mrs. Tarlow's account. I demand a specific answer to my challenge that the ending balances each year as prepared by Albert Deschenes is false and substantially incorrect.

And if I am correct in my last demand I demand a reversal for the use of known and substantial false and manufactured evidence against me by the Internal Revenue Service and the prosecution.

It must be remembered that Mr. Deschenes was not an isolated agent who made an error as any human being is subject to. He masterminded my prosecution. He did the investigation. He failed to follow leads or concealed the result in numerous instances that would be favorable to me. He stole my records and kept many of them, TILL he was caught with them. AND HE WAS THE EXPERT WHO PREPARED EX 820 UPON WHICH THE COURT FUNDAMENTALLY BASED ITS FINDINGS AGAINST ME.

Specification of Error 11

a. (9)

W. K. Royal testimony, affected title to F 43 and my credibility and showed Government produced two perjurious witnesses on that one item.

One property in issue is described in Folder

43. The only evidence of ownership of that property besides Mr. Royal's by me/was the testimony of Madelyn Cox: (2/25/63, Vol. 4, page 55, 19539)

MR. ALEXANDER TO MADELYN COX:

Q Well, when you borrowed the \$500, did you continue to make the payments on the contract after that?

A No, because he told me it was his house then; that I signed the house over to him.

The falsity of this testimony was apparent when one reads her own handwriting and my letters in response as they appear in pages 201 to 215 of the Clerk's Record, 19539.

Mr. Royal also testified that I told him the property was mine (Vol. 6, 2/22/63, 203, 19539). This testimony was proved false when Mr. Royal testified in the State Court that I had never told him that I was the owner. (CR 33)

Thus we have an example of curiously related false statements of my ownership by two persons with interests adverse to each other. The testimony was of oral statements claimed to have been made by me nine or ten years previously.

I shall be more specific. Mr. Royal testified in this case on February 22, 1963 (CR 33, line 31):

"...and at that time he told me that the property, - the contract had been assigned to him."

On July 29, 1963 Mr. Royal testified in the State Court (CR 33 line 25):

"You never told me of any assignment to you."

Yet the property was attributed to me in the Deschenes and the subsequent net worth statements and in the Court's findings (CR 1110, 19539).

I cannot believe that the two false statements of oral admissions by me that many years (nine or ten) previously were not inspired by a person or persons on the prosecution side. Relating this instance to the threat made to Mrs. Bertram by Mr. Deschenes, the false affidavit prepared for her, the false affidavit prepared for Mrs. Tarlow, and a similar type false statement by Mrs. John T. Garson (Vol. 4, 2/25/63, page 188, line 4, 19539): "The letter said, stated that he had purchased the property (Pierce property)..." and there is a pattern shown which should result in the dismissal of the case against me. The falsity of the Garson testimony is evident when one examines the letter itself, which I later found and made a part of the record. See CR pages 193 to 199, 19539.

Specification of Error 11

a. (10) The court's newly expressed finding should allow me an additional \$1500 reduction in my net worth.

This refers to the "Meyer Gold Mine", references to which are page 56 of appellant's opening brief, CR 461, 1030 and 1036 of 19539, Ex N-1, Ex X-2, Adj. 15

The court made a finding (CR 1036, 19539) that I had invested \$3000 with John Meyer for purchase of a gold mine in Southern Oregon; that title was taken in John Meyer and "that the defendant's investment became worthless when Meyer disappeared in 1956 and had previously conveyed away the property and the defendant had a \$3000 long term capital loss in that year." This reduced my net worth by \$1500 for 1956.

It was my position that the court resolved the year of the loss against me, i.e., I claim that I should be allowed to take the loss during the year of discovery of the theft by fraud and that since there is uncertainty as to whether that is 1955, 1956, 1957 or 1958, I should be given the benefit of any doubt and take it in such year as it would do the most good in this case. That question still remains to be determined by the appellate court.

However, the court's finding failed to recognize the loss as a theft loss through fraud (John Meyer having conveyed the property without my knowledge to a third

party. On August 15, 1965 (Tr 26) the Court either changed its finding or expressed its true finding when it said:

THE COURT: I went along with some of your theories; the mysterious miner you were in partnership with; you bought a gold mine and he sold you down the river without telling you, and you forgot all about your gold mine for a number of years, and then you came along and finally discovered you had been defrauded, and you filed an allowance on your records for that. I allowed the allowance on that, although it was kind of a mysterious story...

THE COURT: I am just telling you I accepted some of these stories, as fantastic as they were, because in that case you had some proof you had paid some money. The Title Company had a certificate there. But how a practicing lawyer could buy a gold mine and forget about it for a number of years, and finally his partner defrauds him out of it by selling it; I went along with it.

In the present state of the record I should be allowed a total reduction of \$3000, which would mean an additional reduction of \$1500 for 1956 (which would automatically wipe out Count IV since the difference between my reported loss for that year and the amount of loss found by the court, \$9940.45 as against \$9231.59, left a difference of \$708.86); or I should be given the choice of the year between 1955 and 1958 to take the complete \$3000 loss. Of course, if I chose other than 1956 that year's net worth would be increased by \$1500.

This also points to the valuelessness of the court swallowing whole the findings of the prosecution instead of making its own findings so that the appellate court can really perceive the trial court's thinking.

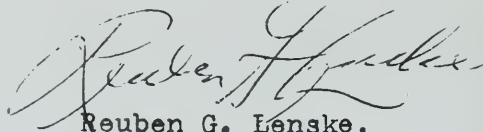
Honesty in Government

I have no quarrel with the Government requiring honesty from its taxpayers. I do quarrel with my Government when it is not honest with its taxpayers.

I do not believe that any disinterested person would sanction the conduct of Deschenes and Nyman in stealing my records from my files. I do not believe that any disinterested person would sanction their making affidavits that they had no records of mine while they held microfilm of two hundred fifty documents that they knew John Brady had stolen from ^{me}.

I do not believe that the best leaders of a democracy would sanction the silence of Deschenes and Nyman in their memoranda, in their log books and in their reports to their superiors about their stealing and photostating documents from my files. Judging from (in the appendix) the attached article/ in the Saturday Evening Post by Senator Long of Missouri this practice had the approval of the superiors under the admonition, "When you're caught, you're on your own." I attach it to show that the problem is not an isolated one with me alone. It is widespread and one effective method of requiring integrity ~~ix~~ in the Internal Revenue Service along Constitutional lines is for the Courts to say so and to rule that such practices as were indulged in in my case will not be rewarded with favorable judgment.

Respectfully submitted,




Reuben G. Lenske,
Appellant.
1014 S.W. 2d Ave.,
Portland, Oregon
97204

Certificate

I certify that in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

Dated December 1, 1965.



Attorney pro se.

My returns were prepared openly and honestly by competent and reliable persons. My former secretary, Mary Yumibe, who later went to work for the Government, said in her affidavit (CR 944, 9539):

"That I helped prepare or type the income tax returns for the partnership and for the individual lawyers in the office; that Reuben Lenske's return was usually prepared the night before the due date, and I helped work that evening with other persons who likewise helped prepare his returns. That to the best of my knowledge, the returns were prepared openly and honestly."

Elva Hawkins was the first witness called by the Government. He maintained the records for the rental properties her husband managed for me from the year 1953 to the year 1961. She helped prepare most of my tax returns for the years in issue (Volume 1, 2/15/63 44, 74-77, 19539.)

Volume 1, 2/15/63, page 43, 19539

Q. (by Alexander) What is your occupation, Mrs. Hawkins?

A. I am an office manager.

Q. Where do you work?

A. Building Products Company.

Volume 1, 2/15/63, page 104, 19539

Q. (Mr. Lenske) What is your education?

A. Well, I finished high school, and have a college degree.

Q. Which college degree?

A. Bachelor of Arts degree from Warner-Pacific College.

Q. In what?

A. Christian Education.

Volume 1, 2/15/63, page 94, 19539, lines 3-15

MR. LENSKE: Q Now, on one of the occasions Mary Yumibe was present, and she was one of my secretaries at that time wasn't she?

A. That is right.

Q. Well, now, Mrs. Hawkins, during the time that you were assisting me did I ever at any time tell or suggest to you that you make any entry or compilation in my tax return that was not in accordance with the records that were available for the purpose?

A. No.

Q. Did I ever at any time suggest to you that you make an error of any kind in your computations?

A. No.

Volume 1, 2/15/63, page 94, 19539, lines 20-25. page 95

Q. (Mr. Lenske) Isn't it a fact that on some of these computations or additions if we were pressed for time, didn't I suggest ... if there was any doubt about it, to give the Government the benefit of any doubt?

A. Yes, that is right.

Q. I see. Now, Mrs. Hawkins, the question I asked you relating to my own returns, was the answer the same respecting Raymond Smith and my returns? Did I at any time suggest to you to put in anything in those returns that wasn't correct?

A. Nothing that I felt wasn't correct did you ever suggest I put into the returns.

Q. Now, when my tax returns were being prepared, when you participated in them, was that usually done in our reception room?

A. Either in the reception room or one of the offices. We worked all over when we were doing it.

Q. Most of the persons doing the work at that time were in the reception room together, weren't they?

A. That is right.

Q. And what I did usually was merely assist in filling gaps that one of the persons helping needed an answer on; isn't that right, Mrs. Hawkins?

A. That is right.

Q. Now, isn't it a fact that during the time that work was being done by the other persons that were helping there was nothing said in your presence that would suggest at any time that my returns be made in any other way than what was correct in accordance with whatever the figures were that were

available?

A. That is right.

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Q In the business relationship that you and your husband had with me from 1953 to 1961, was it necessary for your husband or yourself to have dealings with many, many other people on my behalf?

A Yes.

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Q Now, in relation to any instruments that you signed on my behalf or on behalf of whomever I was acting at the particular time, did I not assure you that if there were any loss of any kind, any liability of any kind, that I would stand good for any such loss or any such liability?

A That is right; you did.

Q Have I in any way broken my word with you at any time?

A No.

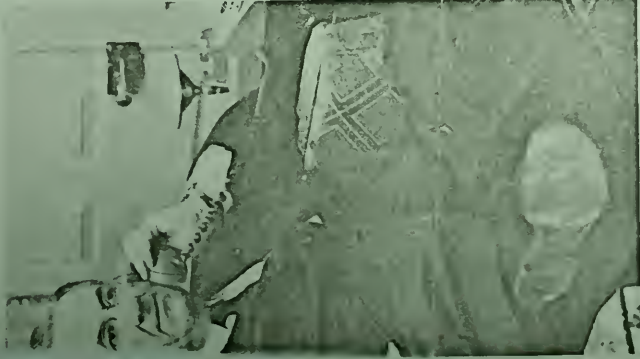
THE COURT: In what manner?

MR. LENSKE: Q In respect to any matter relating to the business that was had between us?

A That is right; no, sir.

On a sunny afternoon in the summer of 1962 a housewife in a suburb of Boston came out of her house and sat on her patio to sunbathe. About 50 yards across the way in a deserted barn a man peered out at her through high-powered binoculars. Later that afternoon, another man crept over to her house, made a surreptitious entry through the back door, and proceeded to open a vault in the basement.

In Pittsburgh a Bell Telephone truck was seen pulling up to a telephone pole for the ostensible purpose of making repairs. The men in the truck were not employees of the telephone company, but were working for the



The author, in the U.S. Senate in 1950, chairs a subcommittee on Internal Revenue Service. He has been a prosecutor, city attorney, state senator, lieutenant governor of his state, Missouri, and is president of several corporations, including banks and an insurance firm.

same organization as the man in Boston. They were there to install an illegal wiretap.

In Washington, D.C., another of these men picked the lock of the apartment of a government employee and planted an electronic listening device under a living-room bookcase.

In another city a lawyer and his client sat alone in a conference room and conducted what they thought was a private conversation. Unknown to them their conversation was not only overheard and recorded, but became an innocent-looking mirror stood a man

observing them through the lens of a camera. The criminal invasions of these citizens' privacy would be shocking enough if the peeping Toms, wiretappers and housebreakers were common criminals. It is much more shocking to learn that they were all accredited agents of the Internal Revenue Service!

The incredible story of how tax investigators have been engaging in premeditated violations of state and federal laws is brought to unfold in public testimony before the Senate. Even more incredible to relate is the campaign being waged behind the scenes by certain government officials to prevent the American public from finding out about it.

For several years the Senate Subcommittee on Administrative Practice and Procedure has been hearing from people all over the United States who complained that they have been the victims of various abuses perpetrated by special agents of the Internal Revenue Service. Due to the frequency and the serious nature of charges, we felt duty bound to find out whether they were true. Did federal agents really engage in these practices, or were the people who made the charges delinquent taxpayers who had it in for the tax investigators for catching them?

We sent our staff investigator to a few cities to make preliminary inquiries and to report back to us. The information he came up with indicated not only that the charges had substance but that the abuses were flagrant, prevalent, alarming in scope, and that they had been going on for many years.

Before scheduling hearings on the matter, I decided to invite the then Secretary of the Treasury, Douglas Dillon, to my office to discuss our initial findings and to ask him what he knew about wiretapping by tax agents. Secretary Dillon told me, quite truthfully I am sure, that in all his years in the Department he had never heard of one case of wiretapping by his employees. It was obvious to me that some very fancy covering up was being done at a lower echelon within the Treasury, and I was determined to uncover the truth in public hearings.

Sheldon Cohen, the newly appointed Commissioner of Internal Revenue, was asked to appear as our first witness, and we were privileged to have him. While Mr. Cohen had been in office less than six months and could hardly be considered responsible for the past abuses by his employees, he forthrightly acknowledged responsibility for their actions.

The commissioner hadn't been on the stand more than a few moments, however, when it became obvious to us that somebody had fed him a mass of misinformation, and that he had a thoroughly distorted picture of what had been going on in his agency.

Commissioner Cohen acknowledged with regret what we knew to be a fact that illegal wiretapping had been engaged in by IRS intelligence agents. This information, however, was that there were only four isolated cases of such abuses, and that the agents involved had acted entirely on their own and contrary to departmental policy. "I have been talking," said the commissioner, "about four cases where devoted and courageous agents acted in

a misjudged and unauthorized effort to abate some of the terror of organized crime."

The explanation, which I am certain was given in good faith, seemed to portray the wrongdoers as a few well-meaning public servants who acted against orders in their zeal to convict vice lords and racketeers. The commissioner indicated that he had already taken steps to curtail future abuses, and that he felt the situation was under control. He further indicated his concern that a public investigation might weaken public confidence in the service, and that our hearings would end up doing more harm than good.

While our subcommittee shared Commissioner Cohen's desire to preserve a favorable public image of the service, information then available to us convinced us that not only were issues of greater magnitude involved, but that, in view of the misinformation that had been furnished to him, a thoroughgoing investigation was an absolute necessity if public confidence in the service was to continue.

We had evidence from scores of taxpayers, attorneys and tax officials which established beyond a doubt that the abuses complained of, rather than being isolated, were part of a national pattern. We learned further that there were agents who participated in them had been anything but "misguided," that their violations of law and other improper acts were clearly "authorized" by officials in Washington, and that the offensive investigative methods, rather than being directed solely toward abating "organized crime," have also been directed against ordinary taxpayers, their lawyers and accountants.

We discovered that for many years agents have been brought to Washington from all parts of the country to attend a unique school, the "Technical Investigative All School," of the Treasury Department, where they are taught the art of lock picking, wiretapping, and the use of other eavesdropping and surveillance devices including sniperscopes, miniphones, and spike mikes—a veritable arsenal of the weapons of Big Brother.

Upon graduating, the agents have returned to their home offices, where they have been supplied the latest in electronic equipment.

The IRS witnesses have been understandably vague about who authorized the agents to use this equipment—after all, wiretapping and "lock-picking" and entering happen to be criminal acts. The evidence is clear, however, that many of them get authorization by calling the office of the IRS Deputy Chief of Intelligence, which would even furnish wiretap specialists if they were needed.

The attitude of the Washington office we brought out quite forcibly in the answer the Deputy Chief, when I asked him why didn't keep a record of wiretap. He answered that "if I had kept a record for any of my periors, if I had asked them, they would have said, 'You know the regulations, anybody n does this is on his own.'"

He went on to testify that his superiors knew that wiretapping was going on, and it was in violation of their own regulations and that they discussed it from time to time. "Particularly when we got caught."

One measure of a democracy's strength is the freedom of its citizens to speak out, to discuss from the popular press through the editors often in disagreement with the opinions expressed in Sp. asking out, they dedicate the wire in that free.

the implication that improper surveillance methods have been restricted to "organized-crime" cases is simply not in accord with the facts. By no stretch of the imagination can the peering at a sunbathing housewife, or the breaking and entering of homes of ordinary taxpayers, or the sneaking into a lawyer's offices to plant "bugs," or the tapping of public phone booths (a common IRS practice), be considered weapons in the war on organized crime. Nor can the waving of this banner explain away the bullying of attorneys who, when they incurred the displeasure of the agents, were themselves subjected to investigation. Nor can it condone the intimidation of juries (it is standard practice in tax-evasion cases to order a background check on jurors). Nor can it excuse the eavesdropping on lawyers and clients in "bugged" conference rooms in IRS offices.

It was in reference to this last practice that Commissioner Cohen's information was extremely inaccurate. At first he told us that there was only one IRS office in which eavesdropping had been done. Later he revised the figure to four or five, and more recently he has informed us that he has discovered that in 24 major cities IRS agents bug the private conversations between taxpayers and their lawyers.

In drawing attention to the inaccuracy of the information supplied to us by the commissioner, I do not mean to imply any attempt at deception on his part, but to point out the galling fact that Mr. Cohen is in the unenviable position of having to get his information from officials who were culpable participants in or accessories to the activities under scrutiny. I base this assertion on the fact that 200 agents of the IRS inspection unit have uncovered not one wiretap, whereas our subcommittee investigation staff consisting of one investigator has in a matter of weeks discovered dozens.

The malignant cancer of police-state tactics in the Internal Revenue Service is too advanced, I fear, to allow for any hope of self-cure. The only way to attack it is to subject it to the glare of public opinion. The American public deserves to know what goes on in the collection of their taxes. After all, it is their money and their Government.

Rather than blaming individual agents for past abuses, it is the intention of our subcommittee to expose the system that trained and equipped them, but somehow failed to equip them with a knowledge of and respect for law. Agent after agent has testified that despite the fact that he was trained to wiretap, no one ever told him that the practice was against the law.

More disheartening to me is the amorality that has arisen from the forced acceptance of improper practices as a way of life. Consider the answers of a Miami agent. I asked him if he would violate the state law in the future, if ordered to do so by his superiors. His answer was a very respectful, and very frightening "Yes, sir."

I then asked him if he realized that it is the basis of a police state for an officer to take the law in his own hands and violate it. His answer again displayed

During the course of the hearings, I sat listening to the agents' testimony. I sat listening to the thought kept coming to my mind that the men who are the instruments of the systematic invasions of privacy are themselves the most tragic victims of the system. With few exceptions they impressed me as decent, hard-working, well-meaning government servants. I am certain that I sensed in some of them a feeling of shame for their acts, and I cannot help but conclude that the self-respect and morale of the service has been severely damaged.

I'm sure that I express the opinion of other members of my subcommittee when I state that we intend to help restore the respect, despite any attempt to discredit us by making it appear that we are impeding the war on crime. We share the desire to bring criminals to justice, but we also insist that justice requires that this be done by *legal* means.

Although our fight against police-state methods has just begun, and we realize the formidable obstacles ahead, I am optimistic about the future. Indeed, I feel that much has already been accomplished. Perhaps the most encouraging result of our efforts to date has been the reaction of President Johnson who, when our findings were brought to his attention, promptly issued an order banning all wiretaps except in national-security cases, and then only by members of the FBI, with the express authorization of the Attorney General.

The Commissioner of Internal Revenue has taken positive steps to limit future abuses. He has issued a directive restricting the use of wiretaps and eavesdropping equipment to certain specified cases. While we are not satisfied that adequate precautions have as yet been taken to prevent further abuses (the Treasury school still conducts courses in lock picking and wiretapping, and the commissioner has indicated that none of the burglary and listening devices will be disposed of), we recognize the difficulties of trying to reverse long-established policies.

The one thing that we promise the American people is that we will not rest until *all* illegal investigative methods against *all* citizens have been stopped. Meanwhile the investigation will continue. We're convinced that we have barely scratched the surface in exposing the IRS Big Brother. To combat him we will need the help of an aroused public, of individuals jealous of their privacy, of lawyers who will fight even when they know that they may be singled out as his next victims.

It has long been recognized that the power to tax is the power to destroy. In our lifetime this precept has been so refined as to demonstrate clearly that the power to investigate taxes is the power to destroy. Freedom cannot survive so long as this power is in the hands of men who have ignorance of or contempt for the law.

The only way to fight Big Brother is by dragging him out in public and keeping the spotlight shining on him. It is our intention to do just that.

Edward W. Galt

